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OFFICE OF PETITIONS

In re Patent No. 7,722,657 : DECISION ON REQUEST FOR
Hartley : RECONSIDERATION OF
Issue Date: May 25, 2010 : PATENT TERM ADJUSTMENT AND
Application No. 10/647,642 : NOTICE OF INTENT TO ISSUE
Filed: August 25, 2003 : CERTIFICATE OF CORRECTION
Attorney Docket No. PA-5343-RFB:

This is a decision on the petition filed on July 26, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, four hundred and sixty-six (1,466) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The term of the above-identified patent is extended or adjusted by **one thousand, five hundred and eight (1,508) days**.

An additional adjustment to the patent term of 42 days is being entered pursuant to 37 CFR 1.702(a)(3) and 37 CFR 1.703(a)(5). It is noted that a decision by the Board of Patent Appeals and Interferences was mailed on September 1, 2009; a notice of allowance was not mailed until February 12, 2010, four months and 42 days after the decision was mailed. It is, therefore, appropriate to enter and adjustment to the patent term of 42 days with said period beginning January 2, 2010, and ending February 12, 2010.

A review of the application file history reveals that the period of adjustment of 108 days entered for the filing of an examiner's answer on May 29, 2008, is unwarranted. The record

reveals that the appeal brief filed October 11, 2007, was determined to be non-compliant with 37 CFR 41.37. An appeal brief was filed March 14, 2008, that was determined to be compliant with 37 CFR 41.37. The period of adjustment pursuant to 37 CFR 1.702(a)(2) and 37 CFR 1.703(a)(4), if any, is therefore properly calculated from the day after the date the four months from the date the appeal brief in compliance with 37 CFR 41.37 was filed, July 15, 2008. The examiner's answer was mailed May 29, 2008. Accordingly, no period of adjustment is warranted under 37 CFR 1.703(a)(4) in this instance. The period of adjustment of 108 is being removed accordingly.

In view thereof, the revised patent term adjustment is 1,508 days (465 days of "B" delay + 241 days of "A" delay + 904 days of "C" delay - 0 days of overlap - 102 days of applicant delay.)

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fee is due.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand five hundred and eight (1,508) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,722,657 B2

DATED : May 25, 2010

INVENTOR(S) : Hartley

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1023) days

Delete the phrase "by 1023 days" and insert – by 1023 days--